K 1951 Examined

File No. S. Belgaum 12/51

Legal DEPARTMENT
E. BRANCH

**Subject:—** Suits: Belgaum.

In the Court of the Civil Judge (S.D.), Belgaum.

Civil Suit No. 660 of 1950.

Madhav Harihar Ashtekar — Pltf.

Vs.

The Province of Bombay — Deft.

P. 15
E

File No. S. Belgaum 12/51

Std. Sectt. Slip 24-B

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Suits Belgaum

C. S. No. 660 of 1950.

Madhav Hariher Ashtekar.

Vs.

Province of Bombay

For a declaration and injunction against the Govt. prohibiting him from obstructing the plff. using his fundamental rights to live, eat, drink and acquire property which has been confirmed by the Indian Constitution of 1950 and restricting the freedom of property in food stuffs.

1-30

Civil Suit No. 660 of 50:

Chornological statement of facts :-

This suit is for declaration and injunction against the Defendant prohibiting him from obstructing the plaintiff in using his fundamental rights to live, eat, drink and acquire property which has been confirmed by the Indian Constitution of 1950 and restricting the freedon of property in food stuffs.

The plaintiff proposes to perform the marriage ceremony of his daughter and the defendant denies all the right to live, by laws prohibiting him to purchase and sell any foodgrains even though they are available from his brother citizens, to serve guests more than 25 persons and free movement of foodgrains from one place to another etc.

The cause of action arose when the plaintiff saw harassment and prosecution when he went to Kolhapur in May 1950 for a marriage ceremony. That gave him cause for apprehension for his own fundamental rights and therefore he prays from relief from all these obstructions on the ground that the laws passed by the defendant are ultra vires and void.

Grounds of defence:- Shri M.H.Deshpande when speaking about the fundamental rights under constitution is evidently referring to section 19 of the constitution and particularly to sub-section (f) of that section. That section reads 19(1):- All citizens shall have the right (f) to acquire, hold and dispose of the property but Shri M.H.Deshpande seems to have given no thought to the wording of sub-section 5 of the same section 19 which reads thus :- Nothing in sub-clause (d) (e) and (f) of the said clause shall affect the operation of the existing laws in so far as it imposes or prevents the State from making any such law imposing reasonable restrictions on excersise of any of the rights conferred by the said clauses either in the interest of the general public or for the protection of the interests of any scheduled tribe. This

This sub-section saves the existing laws from operation of sub-clause (1).

O.C.signed by:
the Collector:

For Collector of Belgaum.

No. A- 117 of 1950.
Belgaum, 15th July 1950.

3 437

Returned with compliments :-

2. The question raised in the notice, is whether laws in force regarding food stuff etc., are ultra vires of the State of Bombay in so far as they appear to conflict with the provisions of the Indian constitution.

3. My answer is that, the present laws are intravires and not ultra vires, of the State of Bombay and for the following reasons

4. Shri. M. H. Deshpande, when he is speaking of fundamental rights under the constitution, is evidently referring to section 19 of the Constitution. And particularly to Sub Section (f) of that Section. That Section reads :- 19(1) All citizens shall have the right, (f) to acquire, hold and dispose of the property and

5. But Shri. M. H. Deshpande seems to have given no thought to the wording of Sub Section 5 of the same Sec. 19 - which read

> Nothing in Sub Clauses (d) (e) and (f) of the said clau shall affect the operation of any exixting laws in so far as it imposes or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses, either in the interests of the genaral public or for th protection of the interests of any scheduled tribe."

This sub\section saves the existing laws from the operation of Sub Section (1).

6. The rationaing and restrictive rules affect no doubt the general public. Secondly, these restrictions are placed in the best interests of the general public and with the best of motives. To remove the restrictions at this time of the day would involve great hardships on the poor and may mean -- starvation and even death to so many.

7. Shri. M. H. Deshpande has not shown nor has he asserted that the existing laws or notifications are not made in the -- interest of the General public and that the restrictions imposed are in any way unreasonable.

16 JUL

8. However, much one may sympathise with the notice giver, I can

be said that the action taken by the Govt. in making laws and issuing notification is unjust or illegal.

9. The proposed suit appears to be ~~maintained~~. The suit if filed deserves to be ~~not~~ defended - the action of the Govt. being ~~indefensible~~ defensible and justifiable.

Dist. Govt. Pleader,
Belgaum.

Submitted to DSG for favour of perusal and orders.

Cpl. 22/7

The plaintiffs may be replied that the laws in force are forfeiture etc. are intra vires and not ultra vires and when we may bring all these facts to the notice of Govt.

Spl. 22/7

DLO:- A was done after obtaining approval from the Collector 24/7

Collr:- Better refer the matter to L.A & obtain approval for filing suit & seek advice on the various questions. Meanwhile send the reply notice & D.G.P.S opinion for perusal

28/7

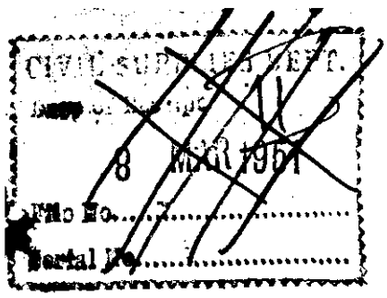
5 61

No DSOSR.
Belgaum, 1-2/3 1951

To

The Director of civil supplies
(Distributo) Bombay.

Subject:- Civil suit- No 660 of 50 :- Report- under rule 118 of the Saw offences rules.




(1) The information regarding the civil suit- No 660 of 50 as required under rule 118 of the Saw offences rules is given as under -

Flag A" ←

9
26/2-
27/2

P- 1

1) civil suit- No :- 660 of 50.

P- 7

2) The date on which :- The suit- and the court- in - which it- was - : was instituted

was instituted on 24-10-50 in the court of the civil - judge senior Division Belgaum

P 7

3) The names of all the parties are as under -.

1) Shri Madhav. Hariharj (plaintiff) Ashtekar, grain dar at- 14, Khadebazar. Shahapur - Belgaum (P1)

Versus

D The province of Bombay | Defendant.

4) The amount of Value of claim : - Rs. 5/- only for court-fee — P-7

5) The date fixed for the first hearing - 11-12-50 — P-5

6) Whether notice of suit has been given under section 80 of the C.P.C and if so the date of delivery of such notice :- yes under section 80 of the C.P.C. The notice was served on the collector of Belgaum on 22-6-50 — "B"

7) The following papers are sent herewith as required by rule 118(2) of the Bom. Process rules.

(a) A copy of the plaint in English (in duplicate) — P-7 to 9.

(b) A chronological statement of facts and the grounds on which it is proposed to defend the suit. (in duplicate) — Page "C"

8) In this case the R.L.A. Bombay was consulted in the matter and he has opined that

(a) The case papers in are file. (kept below

3) The District Govt pleader Belgaum is being requested to take a long adjournment till Govt sanction ~~is~~ to defend the suit is ~~enclosed~~ accorded necessary instructions may please be issued early to defend the suit

DC Colls Belgaum
24/2 23/2 Govt

Copy w.c.to D.G.P. Belgaum with a request to appear in this case on behalf of Govt and to take a long adjournment till sanction of the Govt is received

DC Colls Belgaum
24/2 23/2 Govt

ठरविण्याचें समन्स (आर्डर ५, कानू. १, ५).

(फार्म नंबर २, परिशिष्ट ब, शेड्यूल १.)

दावा नं०

Civ. A 9 m.

येथील जज्ज यांचे कोर्टांत

मुक्काम येथें. नि०

दिवाणी मुकदमा नंबर सन १९ सालची

वादी

विरुद्ध

प्रतिवादी

यांस.

ज्यापेक्षां (The province of Bombay) यानें

तुम्हांवर

बद्दल दावा केला आहे;

त्यापेक्षां सदरहू दाव्याचा जबाब देण्यासाठीं तारीख माहे सन १९ रोजीं दिवसा वाजतां जातीनें किंवा ज्या कोणा प्लीडरास योग्य माहिती दिली असेल व दाव्यासंबंधीं सर्व मुद्यांच्या सवालांचा जबाब देण्यास जो समर्थ असेल किंवा अशा सर्व सवालांचा जबाब देऊं शकेल असा कोणी दुसरा असामी ज्याच्या बरोबर असेल अशा प्लीडराच्यामार्फत या कोर्टांत हजर होण्याविषयीं या लेखावरून तुम्हांस समन्स करण्यांत येत आहे; व ज्यावरून तुमच्या जबाबास बळकटी येईल अशा भरंवशा बाळगण्याचा तुमचा इरादा असेल ते सर्व दस्तऐवज त्या दिवशीं हजर करण्याविषयीं तुम्हांस फर्मावण्यांत येत आहे.

तुम्हांस नोटीस देण्यांत येत आहे कीं, सदरीं लिहिलेल्या दिवशीं तुम्ही हजर न झाल्यास, तुमच्या परोक्ष दाव्याची चौकशी होऊन ठराव केला जाईल.

तसेंच तुम्हांस अशीहि नोटीस देण्यांत येत आहे कीं, निर्दिष्ट केलेल्या तारखेस किंवा तिच्यापूर्वी बजावणीसाठीं पत्ता लिहून देण्यांत तुम्हीं कसूर केल्यास तुमच्या बचावाकडे लक्ष देण्यांत येणार नाहीं.

आज तारीख माहे सन १९ रोजीं
आमच्या सहीनिशीं व कोर्टाच्या शिक्क्यानिशीं दिलें.

गुजास्त—

बेलिफाकडे—

तारीख—

न्यायाधीश

सूचना.—(१) तुमचे साक्षीदार आपण होऊन हजर राहणार नाहींत अशी तुम्हांस शंका वाटेल तर कोणत्याही साक्षीदारांस हजर राहणें भाग पाडण्यासाठीं व जो कोणताही दस्तऐवज हजर करण्याविषयीं साक्षीदारांस सांगण्याचा तुम्हांस हक्क असेल तो दस्तऐवज हजर करणें भाग पाडण्यासाठीं, तुम्हीं कोर्टास अर्ज केल्यास व जरूर असलेला खर्च भरल्यास तुम्हांस या कोर्टांतून समन्स मिळूं शकेल.

(२) वादीचें मागणें तुम्हीं कबूल केल्यास, हुकुमनाम्याची बजावणी तुमच्या जातीवर किंवा मिळकतीवर किंवा या दोन्हींवर होण्याचा संभव आहे ती होऊं नये म्हणून दाव्याच्या खर्चासह तुम्हीं कोर्टांत पैसा भरावा.

नाझर.

Copy to the Collector of Belgaum for Opp. Gov. 51
11 Mtlb Pltff.

In the Court of the Civil Judge, Senior Division,

Belgaum.

Reg 660/1950

1 Madhav Harihar Ashtekar, Inamdar at 14, Khade Bazar, Shahapur, Belgaum. } PLAINTIFF.

VERSUS.

1 The Province of Bombay. } DEFENDANT.

Suit for declaration and injunction.
Valuation for Court fee is Rs. 5/-
Valuation for jurisdiction is ~~Special~~.

Herein the plff prays as follows :-

1) That the plff is a citizen of India, residing at Shahapur, Belgaum District.

2) The plff as a citizen of India, had and has the fundamental right to live, eat and drink and acquire -- property and necessities for the same and the same has been confirmed and reiterated by the Indian Constitution of 1950

3) The deft has passed the following Laws and -- Notifications affecting the above right to live and free transfer and acquisition of property :

(a) The sale and purchase of food stuff and grain, even if they are available from brother -- citizens is forbidden.

(b) The disposal of food stuffs by doing honour to the guests and relatives out of necessities, available at plff's disposal is forbidden, as no dinner to more than 25 persons.

(c) The citizen plff cannot bring his food stuffs from one place to another without a permit.

(d) The producer himself, the plff, is ordered to ration himself, while recovering the levy, which exhausts the exceptions of restraint for public good allowed by constitution.

(e) The breach of the notification is made Criminal, the notification itself being ultra vires, taking away the right to live and freedom of property.

4. The plff cannot live on starving rations doled out by the deft. He is forced to have more and deft has passed laws not to sell and buy necessities of life, even if they arexx available, from brother citizens, which restraint is neither reasonable nor for general public benefit.

5. Plff is unable to understand why the deft should make the help by one citizen to another as plff as sale or charity, a criminal one, as there is no Military necessity, suspending the Civil Law and the civil rights of the citizen plff.

6. The plff proposes to perform the marriage ceremony of his daughter and the deft denies all the right to live, by such laws. Hence the suit to declare the deft's laws, restricting the freedom of property in food stuffs, as ultra vires and void.

7. The cause of action arose when plff saw harassment and prosecution when he went to Kolhapur in May 1950 for a marriage ceremony. That gave him cause for apprehension for his own -- fundamental right and hence the suit to defend the same, for -- exercising it in future ceremonies.

8. (a) The Court fee for declaration with injunction, as specific relief is annas 10 and is paid.

(b) Notice under Sec. 80 C.P.C. is given on 22-6-50.

9. The plff prays for the following reliefs :-

(1) That the notifications and law of deft (details to be supplied by deft ~~&~~) ~~abridging~~ abridging the right of plff to acquire, hold and disposing of property in food stuffs is ultra vires and void, except the recovery of levy.

(2) That an injunction should be issued to the deft to stop inquiries and proceedings under the same, pending and future, as against the plff.

(3) Costs of the suit.

(4) Any other relief.

And decree should be given accordingly.

Dated 24-10-1950.

I, Madhav Harihar Ashtekar, Inamdar, do hereby solemnly affirm that the above is the right and true statement of fact according to my information and belief.

Dated 24-10-1950.

Submitted with reference to the letter from the Collector of Belgaum at page 1 ante.

2. One Shri Madhav Harihar Ashtekar of Shahapur in Belgaum district has filed a suit against the State of Bombay in the Court of the Civil Judge, S.D., Belgaum, praying inter alia for the following reliefs:

(i) The various control orders restricting the acquisition and disposal of foodgrains should be declared invalid and that (ii) an injunction should be issued to the Defendant restricting him from instituting any inquiries or proceedings under those orders, as against the plaintiff.

The suit has arisen as a result, mainly, of the plaintiffs' belief that the orders issued by the Govt. of Bombay prohibiting private movement, sale and distribution of grains as also those restricting feeding at entertainments are a violaiton of the fundamental rights guaranteed to all Indian citizens under the Constitution and therefore, ultra Vires of the State of Bombay.

3. The Collector has supplied all the relevant information about the suit and requested Govt. to sanction defence.

The papers may be passed on to the L.D. for necessary action.

5572
A-20-3-51

13/3 15/3

16/3

L. D.
19 MAR 1951

19/3

19-3-51

[93 ,00,000 7-50—K2*
... R ... D. No. 403, dated 22-6-22.]

Std. Sectt. 78 s. 89

# DOCKET SHEET

17

Subject: Smts. Belgaum
Cr. No. 660 of 1950
Madhav Harihar Ashtekar
Vs.
The State of Bhy

File No. 55-72

Legal DEPT.

A BRANCH.

References:—

| Date | To whom sent. | Notes and instructions |
|---|---|---|
| 20 26/3/51 | Shri Mantri | x<br>The usual memo to Hd-G.P. is put up for signature.<br>26/3<br>x No. 4923 dt 28-3-51<br>Issued<br>28/3<br>A. Sola.<br>26.3. |

Belgaum Civil Suit No. 660 of 1950.

19

The plaintiff sues for a declaration and injunction against the Defendant i.e. the State of Bombay, prohibiting him from obstructing the plaintiff in the enjoyment of his right to acquire and dispose of foodstuffs and in their free movement

2 The suit is defensible. (DG P's opinion is at p. 37 ante).

3. The defence of this suit may be sanctioned on the lines of the accompanying brief

Parthasarathi
28/4/51

Sol: (M.I.). The DG P. may be first requested to move the Govt to call upon the plff to cite which fair trade Act, Enactment, Rules & Ordinances he wishes to challenge on the ground in each case the defence can be more precise possible after the Act information is obtained

H.S. (Sohoni Shirgaonkar)
Adv

Please call for his information
GMD 11/5
Shri Chitnis:

2/93

Belgaum Civil Suit No.660 of 50.

Chronological statement of facts.-

See plaint at p.81 ante

This suit is for declaration and injunction against the Defendant prohibiting him from obstructing the plaintiff in using his fundamental rights to live, eat drink and acquire property which has been confirmed by the Indian Constitution of 1950 and restricting the freedom of property in food stuffs.

The plaintiff proposes to perform the marriage ceremony of his daughter and the defendant denies ~~all~~ the right to ~~live,~~ acquire and dispose of foodstuffs though they are available from his brother citizens, to serve more than 25 guests and free movement of foodgrains from one place to another etc.

The cause of action arose when the plaintiff saw harassment and prosecution when he went to Kolhapur in May 1950 for a marriage ceremony. That gave him cause for apprehension for his own fundamental rights and therefore he prays from relief from all these obstructions on the ground that the laws passed by the defendant are ultra vires and void.

Grounds of defence.

It is ~~bill~~ true that the right of private property secured by the guarantees in the Constitution includes the right to acquire, possess, protect, enjoy and dispose of such property, as provided in clause (1)(f) of article 19 of the Constitution and any law which constitutes an infringement of any of these is unconstitutional. But the enjoyment of the right of property like the enjoyment of other rights protected by constitutional guarantees is limited by the Police power of the State to enact laws for the promotion of the wealth, safety, morals and general welfare of the ~~State~~ people. The advance of civilization and the consequent extension of governmental activities along ~~bills~~ lines having their objective in better living conditions, same social conditions, and a higher standard of human character has resulted on a gradual lessening of the domination of the individual over private property and a corresponding strengthening of this regulative power of the State in respect thereof, so that all private property is held subject to the unchallenged right and power of the State to impose upon the use and enjoyment thereof such reasonable regulations as are deemed expedient for the public welfares. This well settled principle ~~which is accepted by~~ of the American Constitution ~~and enforced by the American Judiciary~~ has been embodied in clause (5) of article 19 of the Constitution of India. That clause lays down that nothing in ~~such cl~~ sub. clause (f) (above referred to) of the said article 19(1) shall affect the operation of any existing law in so far as it imposes of prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause(f) either in the interest of the general public or for the protection of the interest of any schedule tribe. In expression " existing law" as defined by article 366(10) means any law, Ordinance , Order, by-Law, rule or regulation passed or made before

the commencement of the Constitution by any Legislature, authority, or person having power to make such law, Ordinance, Order, rule, bylaw or regulation. Under cl.(5) of article 19(1), all laws including orders made whether before or after the commencement of the Constitution which impose reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause (f) of cl.(1) of article 19 have therefore been saved. The production, supply and distribution of foodstuffs have been regulated under the Essential Supplies (Temporary Powers) Act,1946, and the orders issued thereunder. As the preamble to the said Act indicates the Act provides for the continuance of the powers to control production etc. during a limited period only. The measure is not therefore of a permanent nature; but is enacted to overcome the present shortage in foodstuffs by regulating its production, supply and distribution in the interest of the general public. In fact, by introducting the Rationing System the Defendant has undertaken upon himself the responsibility of supplying foodstuffs like rice, wheat etc. to the public. With a view to maintaining the supply of such foodstuffs to the public, the defendant is required to put various restrictions referred to by the plaintiff on the sale, purchase, disposal etc. of the foodstuffs in the general interest and welfare of the public. The laws and notifications referred to by the plaintiff are therefore saved by the provisions of clause (5) of art. 19 and do not offend against the fundamental right guaranteed to the plaintiff under clause (1)(f) of article 19 in respect of foodstuffs as alleged by him. Moreover the onus of proving the unreasonableness of the restrictions referred to by him and of proving

that such restrictions are not in the interest of the public is on the plaintiff and he has not advanced any argument to prove that such restrictions are not reasonable.

For these reasons it should be submitted that the suit fails and must be dismissed with costs.

2. If, however, the Court is of opinion that provisions of the said Act and the orders issued thereunder are invalid or inoperative, then the attention of the Court may be invited to the provisions of sect.113 of the Civil Procedure Code, as proposed to be amended by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 and the Court may be requested to refer the point for the opinion of the High Court as neither the High Court nor the Supreme Court has as yet given its decision on the point in question.

(It appears from the report of the Time of India dated the 21st April 1951 that the said Act was passed by Parliament on the 20th April 1951. It will therefore come into force when assented to by the President before the suit comes for hearing.)

No. J-214 of 1951.
Belgaum, 3.8 July 1951.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Suit No. 660 of 1950.

Reference:- Your No. 7611 dated 14th May 1951.

Sir,

With reference to the subject noted above I have the honour to inform you that I had put in an application in - ccurt on 9-6-1951 calling upon the plff to supply the parti- -culers reg. Acts, Enactments, Rules and Ordianances etc. - that he wished to challange in the case. But the plff did not supply the said particulers and remained absent in court. The court then dismissed the plff's suit ~~xxxxxxxx~~ i.e on the 28th of July 1951 and allowed the 1/4th costs of Deft.

16043
E|2.8.51

Yours faithfully,

Dist. Govt. Pleader, Belgaun.

Circulated for information.
Since the case has been dismissed, these papers may be filed in Misc. Suits Belgaum/5.
DE
8/8.
Noted

Received by post through the Registrar.
Sri
8/8.

A note has been made
DE
8/8